U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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DATE: APR 28 2011 Office: VERMONT SERVICE CENTER FILE: EAC 09 084 51059

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a limited partnership established in Texas, indicates that it is engaged in operating a retail business since 2005. It claims to be an affiliate of the beneficiary's foreign employer, New M. Chan Trading, located in Bangladesh. The petitioner seeks to employ the beneficiary as its chief executive officer ("CEO") for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director placed undue emphasis on the size and nature of the petitioner's retail business in determining whether the beneficiary would be employed in a managerial or executive capacity. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

As a preliminary matter, the AAO notes that the director commented that the United States entity is considered a "new office" for immigration purposes. The evidence of record indicates that the petitioning company was established as a limited partnership in Texas in 2005, and has been operating a gas station and convenience store known as "Highway Speed Mart" since December of that year. The petitioner indicates that the beneficiary's foreign employer acquired a 50 percent ownership interest in the petitioning company in December 2008. The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 28, 2009.

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F), "new office" means an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year.

The director determined that the petitioning company is considered a "new office" based on the change in ownership structure, notwithstanding the fact that it has been operating in the United States for more than three years at the time of filing. Counsel asserts that the "new office" regulations should not apply when a foreign entity acquires a controlling interest in a fully operational subsidiary in the United States.

Upon review, we concur that the petitioning company should not be considered a "new office," and the director's comments in this regard will be withdrawn. Upon review of the director's decision in its entirety, we find the error harmless, as the director does not appear to have applied the new office regulations at 8 C.F.R. § 214.2(l)(3)(v) to the facts of this case.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 28, 2009. In a letter dated January 21, 2009, the petitioner described the beneficiary's proposed duties as CEO as follows:

> [The beneficiary] will have overall executive responsibility for developing, organizing, and establishing the purchase, sale and marketing of merChanise [*sic*] for sale in the U.S. market. [The beneficiary's] other duties will include: (i) identifying, recruiting, and building a management team and staff with background and experience in the U.S. retail market; (ii) negotiating and supervising the drafting of purchase agreements; (iii) marketing products to consumers according to [the foreign entity's] guidelines; (iv) overseeing the legal and financial due diligence process and resolving any related issues; (v) developing trade and consumer market strategies based on guidelines formulated by [the foreign entity]; (vi) developing and implementing plans to ensure [the petitioner's] profitable operation; and (vii) negotiating prices and sales terms, developing pricing policies and advertising techniques.

The petitioner further indicated that the beneficiary's time will be allocated as follows:

Management Decisions	40%
Company Representation	15%

Financial Decisions	10%
Supervision of day-to-day company functions	10%
Business Negotiations	15%
Organizational Development of Company	10%

The petitioner stated on Form I-129 that it employs seven workers. The petitioner provided an organizational chart indicating that the beneficiary, as CEO, will directly supervise an executive secretary, a finance manager, and a manager - operations. According to the chart, the finance manager will supervise a staff accountant and a bookkeeper, and the manager – operations, will supervise a manager-retail and a purchase agent. These two employees would, in turn, supervise a total of two sales clerks/stockers. The chart identifies a total of ten positions. The only employees identified by name are the beneficiary and the finance manager. The petitioner indicated that the finance manager holds a bachelors degree, and provided a copy of the employee's degree certificate. The petitioner included an attachment containing job descriptions for each position listed on the organizational chart.

The petitioner submitted copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, and Texas Workforce Commission Employer's Quarterly Reports for the first three quarters of 2008 and last quarter of 2007. The petitioner reported a total of six employees as of September 2008, five employees in August 2008, and four employees in July 2008. The company consistently employed one to two people between October 2007 and May 2008. The petitioner's six reported employees earned total wages of $8,770 during the third quarter of 2008. The employees listed on the report are: [redacted] who earned wages between $420 and $3,000 during the quarter. It does not appear that any wages were paid to [redacted] the individual who is identified as the petitioner's Finance Manager.

Finally, the petitioner submitted a business plan for the U.S. company. According to the business plan, the business is open 12 hours per day, 7 days per week, employs 10 workers, and pays approximately $8,000.00 in salaries every month.

The director issued a request for additional evidence on March 3, 2009. The director instructed the petitioner to submit, *inter alia*: (1) a comprehensive description of the beneficiary's duties; (2) a complete position description for all proposed employees in the United States; and (3) a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis.

Counsel for the petitioner submitted a letter dated April 12, 2009 in response to the director's RFE. Counsel emphasized that eligibility for the L-1 visa classification is not limited to large U.S. companies or to beneficiaries with extensive supervisory responsibilities.

With respect to the beneficiary's duties, counsel stated:

> [The beneficiary] serves as the Chief Executive Officer of our U.S. subsidiary . . . and continues to establish our U.S. operations. She is responsible for all our planning, expansion, banking,

> budgeting, and marketing. In addition, she hires and trains other managers and employees and is in charge of increasing the sales of the company. She is employed at the highest executive level and has complete authority to establish goals and policies and exercises discretionary decision-making authority based upon policies and procedures developed by shareholders. [The beneficiary] assumes sole responsibility of all discretionary actions taken by the U.S. entity to ensure its profitable operation.
>
> [The beneficiary] will supervise other professional and managerial employees, establishes goals and policies for the U.S. investment, and exercises wide latitude in discretionary decision-making under the direction of directors and shareholders of the Parent Company. Beneficiary's duties are clearly "Executive or Managerial" in nature. . . .

Counsel further stated:

> [The beneficiary] is employed at the highest position within the U.S. company and oversees supervises managers who supervise employees running day-to-day operations. [The beneficiary] plans and directs the management of the Petitioner through its own employees as well as outside contract employees who perform the legal and accounting duties. The beneficiary is the individual responsible for establishing goals and policies and exercising wide latitude in discretionary decisions making duties, which includes supervising managerial level employees. In sum, [the beneficiary] has the overall responsibility of planning and developing the U.S. investment, executing or recommending personnel actions, placing a management team to run the operations, supervising all financial aspects of the company and developing policies and objectives of the company.

The director denied the petition on May 1, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director emphasized that the description of the beneficiary's duties were too general and nonspecific, and generally paraphrased the statutory definitions of managerial and executive capacity. The director further determined that the evidence was insufficient to establish that the beneficiary's proposed subordinate employees would be managers or professionals, notwithstanding their job titles and educational credentials. In this regard, the director noted that, "considering the number of hours a gas station and convenience store is open during a typical week, it seems likely that the beneficiary's professional staff and possibly the beneficiary will be directly involved in the day to day operation of the business." The director further observed that it was questionable whether an employee of a gas station and convenience store would be required to hold a bachelor's degree.

The director concluded that while the beneficiary's proposed job has an executive title, the petitioner failed to establish that she would be engaged in primarily managerial or executive duties, or that she would be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service.

On appeal, counsel reiterates the beneficiary's previously provided position description and arguments made in response to the director's request for evidence. Counsel emphasizes that the L-1 visa category is available to small companies, and argues that USCIS is required to consider the petitioner's "reasonable needs" and its stage of development. Counsel emphasizes that the petitioner does in fact employ two individuals, the finance manager and the operations manager, who possess a bachelor's degree or equivalent, and who require such education to perform their job duties.

Counsel concludes that, based on the evidence submitted, it is "very clear" that the beneficiary will supervise other professional and managerial employees, establish goals and policies for the U.S. investment, and exercise wide latitude in discretionary decision-making.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In the instant matter, counsel and the petitioner have repeatedly described the beneficiary's proposed position in very broad terms, noting her "complete authority to establish goals and policies," her "discretionary decision-making authority," and her "overall responsibility of planning and developing the U.S. investment." These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The petitioner further states that the beneficiary will oversee "the legal and financial due diligence process," develop "trade and consumer market strategies," develop and implement plans to ensure "profitable operation," and develop pricing policies and advertising techniques. However, the petitioner does not specifically identify the object of the due diligence or specifically describe the market strategies, "profitable operation" plans, pricing policies, or advertising techniques to be developed and implemented. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which appears to include inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties on a day-to-day basis within the context of the petitioner's retail business.

Similarly, although the petitioner provided a breakdown of how the beneficiary's time would be allocated among her various responsibilities, this description was even more vague, indicating that the beneficiary would devote her time to "management decisions," "company representation," "financial decisions," "business

negotiations," "organizational development," and "supervision of day-to-day company functions." The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner also addresses the beneficiary's responsibility for "developing, organizing, and establishing the purchase, sale, and marketing of merchandise" and notes that the beneficiary will be involved in negotiating and supervising the drafting of purchase agreements, "marketing products to consumers," "developing trade and market strategies," negotiating prices and sales terms, overseeing financial issues, and "developing pricing policies and advertising techniques." The petitioner's description does not clearly identify the managerial or executive duties to be performed with respect to the purchase, marketing, sales, finance, and advertising functions of the petitioner' retail operations. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Thus, while several of the duties generally described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity. Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner indicates that it is operating a retail store and that the beneficiary will be charged with supervising a staff comprised of managers, first-line supervisors, professionals and labor. However, the petitioner has failed to clearly document the number and type of employees working for the petitioning company as of the date of filing. The petitioner has consistently claimed in its letters that it employs seven

workers. The petitioner's business plan indicates that it employs 10 workers and has a monthly payroll of $8,000. The petitioner's organizational chart identifies a total of ten positions. It identifies only two employees by name, and indicates that its secretary position is "open." The petitioner has not submitted evidence of wages paid to one of its only named employees, [redacted] the finance manager. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the four quarters preceding the filing of the petition, the petitioner reported quarterly wages of $9,000, $8,000, $7,500, and $8,770. The number of staff employed by the store during this period has ranged from one to a high of six in September 2008. The petitioner has not submitted its state or federal quarterly tax documentation for the fourth quarter of 2008, so it is unclear how many employees worked for the business as of January 2009 when the petition was filed. Based on the evidence submitted, the petitioner has not corroborated its claims that it employs seven or ten employees, nor has it demonstrated that it has a monthly payroll of $8,000. The most recent quarterly wage report, for the third quarter of 2008, indicates a total of six employees, only one of which earned wages that may be commensurate with full-time employment. The remaining employees appear to have earned between $420 and $850 per month, with the petitioner's claimed operations manager receiving only $500 per month. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. While we acknowledge that the petitioner submitted evidence that its claimed finance manager, Irfan Dossani, has a bachelor's degree, the record remains devoid of evidence of wages paid to this individual.

Furthermore, the petitioner's evidence must substantiate that the duties of the beneficiary and her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position.

While the petitioner has submitted a proposed organizational chart depicting four tiers of proposed managerial employees supervising a staff of "cashiers/clerks," a two-person accounting department, and a purchase clerk, the petitioner has not shown how a single gas station and convenience store would support this staffing structure. The petitioner's stated need for four or more managers and as few as one or two cashiers is not entirely plausible given the nature of the petitioner's business and the petitioner's claim that it will be open for business seven days per week for 12 hours per day. It appears that all current employees work at the petitioner's store, and no office or other location has been documented. While it has assigned many of its claimed employees managerial job titles, it is reasonable to believe that the petitioner actually requires more lower-level employees, such as cashiers and stockers, than it does managers, particularly in light of the most recent state quarterly wage report, which suggests that the majority of the employees work on a part-time basis.

Moreover, we note that the petitioner indicates that it intends to acquire additional retail locations and states that each acquisition would be staffed by a first-line manager, assistant manager and three cashiers/clerks. This staffing arrangement appears to be typical for a gas station and convenience store, and raises questions regarding the stated organizational structure of the current retail location.

Based on the foregoing, the petitioner has not provided credible evidence of an organizational structure that would be sufficient to elevate the beneficiary to a supervisory position that is higher than a supervisor of non-professional employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.[1]

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[1]While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce exactly what the beneficiary will do on a day-to-day basis, such that it could be concluded that she would perform primarily executive duties. Moreover, given the petitioner's failure to clearly document the number and type of workers it actually employs, the petitioner has not established that the beneficiary would be relieved from performing primarily non-qualifying duties.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that U.S. Citizenship and Immigration Services (USCIS) "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Service,* 469 F. 3d 1313, 1316 (9th Cir. 2006) (*citing with approval Republic of Transkei v. INS,* 923 F 2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner claims to operate a gas station and convenience store with seven to ten employees, including several tiers of management and only one to two cashiers. The evidence of record indicates that the petitioning company has been operating with only one to six employees, many of whom apparently work part-time. The petitioner also states that it is open for business 84 hours per week. The petitioner claims to have a monthly payroll of $8,000, but in fact appears to pay salaries and wages of only $8,000 per quarter. Upon review of the totality of the evidence, the petitioner's store appears to be minimally staffed with mostly part-time workers, and the petitioner has not established that the current staffing arrangement would be adequate to relieve the beneficiary from performing administrative and operational duties associated with operating the retail business. As discussed above, notwithstanding the job titles assigned to the beneficiary's subordinates, it appears that most or all of the employees would be required to spend their working hours

engaged in the day-to-day operations of the business in order for the store to remain operational during the stated hours of business.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the foregoing, the petitioner has not established that the petitioner will be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Finally, although not addressed by the director, the petitioner submitted insufficient evidence to establish that the petitioner has a qualifying relationship with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be an affiliate of the beneficiary's foreign employer, [redacted] a sole proprietorship located in Bangladesh. The evidence of record indicates that the foreign entity is owned by [redacted] The petitioner indicates that the foreign entity owns "50% of the shares" of the U.S. company, a limited partnership registered in Texas on August 10, 2005.

The petitioner submitted a "Partnership Amendment Agreement" dated December 23, 2008 and effective on January 1, 2009. The agreement reflects that the original partnership agreement was made on August 10, 2005 and amended on March 1, 2008. The amendment to the agreement was as follows:

1. The Partnership's General Partner and sole limited partner agree to issue 100 additional units of partnership capital to a new Limited Partner – [redacted] for $150,000 (one hundred and fifty thousand dollars) as valuable consideration in exchange for 50% ownership share. Upon this issuance the total partnership capital and ownership will be as follows:

[redacted]	1.0 Units	0.50% Ownership
	99.0 Units	49.50% Ownership
	100.00 Units	50.00% Ownership

According to the petitioner's 2007 IRS Form 1065, U.S. Return of Partnership Income, the petitioner's ownership structure at that time was as follows: [redacted]

The petitioner submitted a copy of a Bank of America check dated January 12, 2009 for $150,000 drawn from a joint savings account belonging to the beneficiary and [redacted] and issued to the petitioning company. The petitioner also submitted a copy of the petitioner's Wells Fargo Bank deposit slip indicating receipt of the check. The petitioner provided a bank statement for the beneficiary's savings account indicating that it had a balance in excess of $252,000 as of December 24, 2008.

In the request for evidence issued on March 3, 2009, the director requested additional evidence to establish that the foreign entity had in fact paid for the ownership of the United States entity. In response, the petitioner re-submitted the above documents.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. A petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire into the means by which ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for ownership.

The petitioner seeks to establish that the Bangladeshi entity [redacted] purchased a 50 percent partnership share in the U.S. company. Although the petitioner submitted evidence that the beneficiary and her spouse wrote a check to the petitioning company in the amount of $150,000, the petitioner has not established that the check constituted payment from the foreign entity, a sole proprietorship owned by [redacted] The AAO acknowledges the possibility that [redacted] and the beneficiary's spouse may be one and the same person, but the record does not clearly establish whether this is the case. Furthermore, while the petitioner submitted evidence that the account from which the check for $150,000 was drawn had sufficient funds, the petitioner has not submitted the cancelled check, or bank statements confirming the withdrawal of the funds and the deposit of the funds into the petitioner's bank account.

In addition, the petitioner provided an amendment to the petitioner's partnership agreement reflecting the foreign entity's 50 percent ownership interest, it failed to provide the original partnership agreement and evidence of its subsequent amendment in March 2008. Based on the corporate tax returns submitted, it

appears that [redacted] held a 49 percent partnership interest in the company, and it is unclear why this individual was not a party to the amendment to the partnership agreement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the foregoing deficiencies, the AAO finds the petitioner's evidence insufficient to establish the claimed qualifying relationship between the U.S. and foreign entities. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.